

1 KEKER & VAN NEST LLP
2 ROBERT A. VAN NEST - # 84065
3 rvannest@kvn.com
4 CHRISTA M. ANDERSON - # 184325
5 canderson@kvn.com
6 DANIEL PURCELL - # 191424
7 dpurcell@kvn.com
8 633 Battery Street
9 San Francisco, CA 94111-1809
10 Telephone: 415 391 5400
11 Facsimile: 415 397 7188

7 KING & SPALDING LLP
8 SCOTT T. WEINGAERTNER
9 (Pro Hac Vice)
10 sweingaertner@kslaw.com
11 ROBERT F. PERRY
12 rperry@kslaw.com
13 BRUCE W. BABER (Pro Hac Vice)
14 1185 Avenue of the Americas
15 New York, NY 10036
16 Tel: 212.556.2100
17 Fax: 212.556.2222

13 Attorneys for Defendant
14 GOOGLE INC.

15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA
17 SAN FRANCISCO DIVISION

18 ORACLE AMERICA, INC.,
19 Plaintiff,
20 v.
21 GOOGLE INC.,
22 Defendant.

KING & SPALDING LLP
DONALD F. ZIMMER, JR. - #112279
fzimmer@kslaw.com
CHERYL A. SABNIS - #224323
csabnis@kslaw.com
101 Second Street, Suite 2300
San Francisco, CA 94105
Tel: 415.318.1200
Fax: 415.318.1300

IAN C. BALLON - #141819
ballon@gtlaw.com
HEATHER MEEKER - #172148
meekerh@gtlaw.com
GREENBERG TRAURIG, LLP
1900 University Avenue
East Palo Alto, CA 94303
Tel: 650.328.8500
Fax: 650.328.8508

Case No. 3:10-cv-03561 WHA

**GOOGLE'S RESPONSE TO THE
COURT'S AUGUST 7, 2012 ORDER RE
DISCLOSURE OF FINANCIAL
RELATIONSHIPS WITH
COMMENTATORS ON ISSUES IN THIS
CASE**

Dept.: Courtroom 8, 19th Floor
Judge: Hon. William Alsup

1 On August 7, 2012, the Court issued an Order directing the parties and their counsel to file
2 a statement "identifying all authors, journalists, commentators or bloggers who have reported or
3 commented on any issues in this case and who have received money (other than normal
4 subscription fees) from the party or its counsel during the pendency of this action." Dkt. 1229.

5 STATEMENT

6 Neither Google nor its counsel has paid an author, journalist, commentator or blogger to
7 report or comment on any issues in this case. And neither Google nor its counsel has been
8 involved in any *quid pro quo* in exchange for coverage of or articles about the issues in this case.

9 As the Court has recognized, a large volume of material was written in traditional
10 publications and on the Internet about the case. Given the rise of self-publishing, individual
11 blogs, and other fora for coverage and opinion, it is possible that any number of individuals or
12 organizations, including those with indirect or attenuated financial connections with the parties,
13 might have expressed views regarding this case. Rather than flooding the Court with long lists of
14 such individuals or organizations who might have written something about the case, Google
15 outlines below several general categories of individuals and organizations and requests the
16 Court's further guidance as to whether it would be useful for Google to provide more details or
17 attempt to compile a more comprehensive list. Google does not believe that individuals or
18 organizations within these categories were intended to be encompassed within the scope of the
19 Court's Order but Google brings them to the Court's attention out of an abundance of caution.
20 Neither Google nor its counsel has paid any individuals or organizations within these categories
21 to report or comment on any issues in this case.

22 A. Universities and other non-profit entities

23 For many years, Google has engaged in philanthropy in numerous areas including
24 education and public interest issues. Accordingly, both before and after this litigation started,
25 Google has openly and publicly donated money on a regular basis to a number of universities
26 (*see, e.g.*, http://research.google.com/university/relations/focused_research_awards.html, attached
27 hereto as Ex. A), and to non-profit organizations (*see, e.g.*,
28

1 <http://www.google.com/publicpolicy/transparency.html>, attached hereto as Ex. B).

2 At least some of those universities and entities have representatives who have elected to
3 comment or opine on the issues in this litigation, even though Google did not pay any of those
4 representatives to provide that commentary. Google began supporting and donating money to
5 these organizations long before this case began, and none of those periodic donations was
6 payment for commentary by representatives of those organizations on issues in this case. It
7 would be extraordinarily difficult and perhaps impossible for Google to identify all individuals
8 who have commented on the issues in this case and who are also affiliated with a university or
9 non-profit organization to which Google has donated money.

10 **B. Organizations to which Google belongs or has made contributions**

11 For many years, Google has been a member of, or contributed to, numerous organizations,
12 including political organizations and trade associations. Google has openly and publicly
13 published for several years a list of such organizations on its U.S. Public Policy Transparency
14 page (available at <http://www.google.com/publicpolicy/transparency.html>, and attached hereto as
15 Ex. B). Google has not paid any of these organizations to comment on the issues in this case.
16 This case, however, attracted significant media and industry attention and Google is aware that
17 representatives of some of these organizations have elected to comment on the case. It would be
18 extraordinarily difficult and perhaps impossible for Google to identify all individuals who have
19 commented on the issues in the case and who are also affiliated with one of these organizations.

20 **C. Individuals who participate in Google's advertising programs and who also have**
21 **elected to comment on the case**

22 Google derives revenue from its advertising programs, which benefit millions of
23 advertisers, publishers and owners of individual websites. For example, under Google's AdSense
24 program, Google pays publishers for ads displayed on their websites. It would be extraordinarily
25 difficult and perhaps impossible for Google to identify individuals who received money from
26 Google as part of the normal operations of Google's advertising programs and who have also
27 commented on the issues in this case.

D. Google employees, vendors or contractors who may have commented on the case

Google employs tens of thousands of people and also hires many vendors (including outside counsel in this case) and independent contractors. Aside from Google employee or vendor statements expressly attributed to Google (such as Google public relations personnel responding to press queries about the lawsuit), these individuals were paid for other services performed, and were not paid to comment on the issues in this case. It would be extraordinarily difficult and perhaps impossible for Google to identify any and all such individuals who also happened to comment upon the instant lawsuit.

E. Expert consultants

Google retained expert consultants to opine on matters relevant to this litigation, both on a testifying and non-testifying basis. Google did not retain or pay any of these individuals to provide public commentary on the issues in this case beyond the testimony and opinions they rendered in this matter. Accordingly, Google does not understand these individuals to be within the intended scope of the Court's Order.

F. Witnesses identified for trial

As the Court is aware, there were numerous witnesses identified for trial, some of whom had affiliations with and received money from one or both of the parties to this case and who also elected to publicly comment on the case. In light of the fact that the identities of these witnesses are part of the record on appeal, Google does not understand these individuals to be within the intended scope of the Court's Order.

Dated: August 17, 2012

KEKER & VAN NEST LLP

By: /s/ Robert A. Van Nest
ROBERT A. VAN NEST

Attorneys for Defendant
GOOGLE INC.